

REMARKS

Claims 48-79 are pending in the application.

Reconsideration and allowance in view of the following remarks are respectfully requested. Applicant respectfully submits that the conclusions set forth in the Office Action are unsupported by the teachings of Johnson, U.S. Patent 6,999,943

A. The 35 U.S.C. 102 Rejection

In the Office Action, claims 48-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (hereinafter Johnson) U.S. Patent 6,999,943. This rejection is traversed.

In particular, claim 48 recites “performing, after identifying the single payment source and the payee account, an optimization determination to determine a payment mechanism to use to transfer the funds” in conjunction with other features. As discussed in Applicant’s April 10 Response, Applicant respectfully submits that Johnson fails to teach or suggest such claimed features. Relatedly, Applicant respectfully submits that the various assertions set forth in the Office Action, to support the 35 U.S.C. 102 rejection, are misplaced and unsupported.

Under 35 U.S.C. §102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. *Id.* “A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, **every limitation of the claim.**” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The **identical invention** must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). “Absence from the

reference of *any* claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

On page 2, the Office Action asserts:

Applicant argues that Johnson fails to teach performing, after identifying the single payment source and the payee account, an optimization determination to determine a payment mechanism to use to transfer the funds from the single payment source to the payee account, the processor using the first information and payment platform information in the optimization determination. (column 17, line 65 thru column 19, line 20; **Examiner notes the system further does a cost/benefit analysis to determine which of several ways to process a transaction.** For example it compares processing from a checking account (single source) by either ACH debit versus debit card. Cost/benefit analysis includes considering transaction date/time, amount of transaction, currency of transaction, type of payment instrument involved, customer’s interest rate, likelihood of defaulting on existing debt, alternative payment methods, etc.; see also column 26, lines 55-64). **These factors used cost /benefit analysis such as determining which of several ways to process a transaction and are consistent with Applicant’s specification for determining what type of payment mechanism to use to transfer the funds from a payment source to the payee account.** Therefore Applicant’s arguments are not persuasive.

(Emphasis added)

In summary, Applicant acknowledges that the system of Johnson performs analysis to determine which of several ways to process a transaction (e.g., Applicant notes the processing of the transaction evaluator 230 as described at column 9, lines 43-46, and column 11, lines 15-18). However, such automated processing (see column 9, lines 48-49) goes to the selection of the payment method, and does not teach optimization processing once a “single payment source” is established, so as to teach the claimed invention of claim 48.

Thus, the Office Action’s assertion that the “Examiner notes the system further does a cost/benefit analysis to determine which of several ways to process a transaction” is acknowledged. However, such is not dispositive as to whether Johnson teaches the claimed invention.

Applicant traverses the Office Action's assertion, on page 2, that:

These factors [of Johnson] used cost /benefit analysis such as determining which of several ways to process a transaction and are consistent with Applicant's specification for determining what type of payment mechanism to use to transfer the funds from a payment source to the payee account.

Such assertion in the Office Action appears to reflect that Johnson teaches that the single source is identified, and thereafter (in further processing), processing is performed to determine how to route such transaction, i.e., how to route the transaction from the single source to the destination account. Applicant submits that Johnson does not provide such teaching, and does not suggest such teaching. Various comments to support such position of Applicant are set forth below.

In the Office Action comments, page 2, the Office Action references column 17, line 65 through column 19, line 20, of Johnson. Therein, Johnson describes that there may be several ways to process transactions between a merchant and an issuer. (see column 17, line 65). Therein, Johnson further describes that there are a variety of systems that may be used for credit and fraud risk assessment. However, such teachings of Johnson fail to disclose the claimed optimization of routing after the single source is identified, as recited in claim 48. Rather, in summary, Johnson describes that there are different ways to process a transaction, and that risk assessment may be used in such decisioning. Such falls short of teaching the claimed invention.

The Office Action further references Johnson at column 26, lines 55-64. Therein, Johnson describes:

In one embodiment, the transaction evaluator can evaluate multiple processing options for one or more payment methods. For example, by maintaining relationships with multiple acquirers or transaction processors, the transaction evaluator can route transactions to the parties who will profit most from the transactions and/or who offer the most favorable terms. Alternatively, desirable transactions can be routed to participating transaction processors (acquirers) and

undesirable transactions can be routed to non-participating (or blacklisted) processors.

The Office Action is essentially attempting to interpret such disclosure by drawing an association between the “transaction evaluator can evaluate multiple processing options for one payment methods” vis-à-vis that the transaction evaluator “can route transactions to the parties”.

However, such disclosure simply fails to convey the claimed feature of optimization of routing after the single source is identified, as recited in claim 48. That is, such disclosure of Johnson fails to teach the features of claim 48:

performing, **after identifying the single payment source** and the payee account, an optimization determination to determine a payment mechanism to use to transfer the funds from the single payment source to the payee account, the processor using the first information and payment platform information in the optimization determination; ...

That is, to extrapolate the column 26, lines 55-64, disclosure to assert that Johnson teaches that for one payment method the transaction evaluator chooses from different routings extends beyond what Johnson fairly teaches, and further, is very much inconsistent with Johnson’s other disclosure, as discussed herein. The referenced “processing options” (Johnson, column 26, line 56) could be any of a wide variety of features that Johnson is generally referring to. The example that Johnson provides (Johnson, column 26, line 57) does reflect that transactions can be routed differently. However, based on Johnson’s disclosure, as discussed herein, such different routing is driven by the different payment methods, i.e., the different payment methods of Johnson, column 9, lines 19-21.

That is, Applicant’s above comments are consistent with the various other disclosure of Johnson as discussed below, including portions of Johnson referenced in the 35 U.S.C. 102 rejection on page 4 of the Office Action.

Note for example, Johnson at column 10, lines 24-31. Therein, Johnson describes that “Methods for analyzing transactions to make **routing decisions** are described in more detail below with respect to FIG. 3.” Applicant notes in particular step 360 of Fig. 3, as described in Johnson column 14, lines 9-15. Johnson describes:

(j) At step 360, the transaction evaluator notifies the merchant that the first payment option (i.e., the **credit card**) was selected and notifies the merchant that \$97 should be received from the issuer and that the merchant will receive a rebate of \$0.45. The remaining \$0.05 of the rebate is kept by the transaction evaluator, as shown in steps (l) and (o) below.

Thus, Johnson’s analysis of transactions to make routing decisions, as reflected in Fig. 3, indeed relates to the selection of the source account, i.e., the first payment option (i.e., the credit card) was selected.

Relatedly, Applicant notes column 10, lines 32-57 (as referenced in the Office Action) and Johnson’s related disclosure in column 9. In column 9, lines 9-28, Johnson describes:

FIG. 2 shows the overall transaction flow in an exemplary transaction using an exemplary embodiment of the invention. Customer (200) has relationships with issuer 1 (210) and issuer 2 (215), issuers of **two payment instruments**. Each issuer may provide services to the customer, the payment network, and/or any other entity involved with the network, such as providing transaction and billing statements showing purchases, extending credit, and accepting risk if customer (200) fails to pay.

To make a payment to merchant (205), customer (200) provides information describing the **payment method(s)** that the customer can offer and is willing to allow the merchant to use for the transaction. If the customer can only provide one payment method acceptable to the merchant or that can cover the entire purchase amount, the **merchant processes the transaction with that method**. Otherwise, the merchant receives information about **two or more methods** with the understanding from the customer that the transaction may be processed by either or any of these methods.

Relatedly, in column 10, lines 32-34, (relied upon in the Office Action, page 4) Johnson describes that based on its analysis, the transaction evaluator chooses one transaction method and notifies merchant (205) which method to use when processing the payment transaction. The

merchant notifies the customer **which payment method** will be used and submits the transaction for payment through the appropriate transaction processing mechanism.

However, the “payment method” that Johnson therein refers to is the “payment” methods (Johnson, column 9, lines 19-21) that the customer can offer and is willing to allow the merchant to use for the transaction. Thus, such fails to convey the claimed feature of optimization of routing after the single source is identified, as recited in claim 48.

Relatedly, Applicant notes column 9, lines 43-63, of Johnson:

Merchant's point-of-sale systems provide information about the transaction methods to **transaction evaluator** (230) (described in Section E below and elsewhere), which is **responsible for selecting one of the payment methods**. Both the process of sending information to the transaction evaluator and the transaction evaluator's selection processes are preferably automatic. The selection result typically depends on the estimated cost/benefit characteristics (e.g., economic utility) for each **payment method**. For example, a payment instrument from an issuer that has a business relationship with the transaction evaluator (which can be operated by the merchant, the issuer, some combination of entities, or independently) to provide a 50-cent rebate per transaction would be chosen over a similar instrument from an issuer that does not. Similarly, a payment method with lower risk or fees (such as cash) could be selected over one with higher fees (such as check). The transaction evaluator can also route transactions that are likely to be unprofitable (e.g., if the transaction is small or has a high credit loss or fraud risk, etc.) away from issuers who have appropriate business relationships with the merchant or the transaction evaluator.

Thus, such disclosure clearly relates to the selection of the payment method, i.e., the source of the payment, and does not relate to (nor teach) the claimed feature of optimization of routing after the single source is identified, as recited in claim 48.

Further, as referenced in the Office Action, Applicant notes Johnson at column 12, lines 1-34. The Office Action also relies on such teachings in support of the rejection on page 4 of the Action. Johnson describes the consideration of a **credit card** (see column 12, line 5) and consideration of an **electronic checking account debit option** (see column 12, line 17).

Thereafter, Johnson describes:

(h) The transaction evaluator selects the credit card as the preferred transaction processing method, since the checking account transaction has an estimated average discount rate of 2 percent as opposed to 1.8 percent for the credit card transaction.

(i) The transaction evaluator notifies the merchant web server that the first payment option (i.e., the credit card) was selected and notifies the merchant that \$97 should be received from the issuer and that the merchant will receive a rebate of \$1.10. The remaining \$0.10 of the rebate is kept by the transaction evaluator, as shown in steps (k) and (n) below.

Applicant submits that such teaching of Johnson clearly relates to the selection of the payment source. Thus, the conclusions in the Office Action that such teachings describe the claimed feature of optimization of routing after the single source is identified, are clearly unsupported.

Applicant respectfully submits that Johnson fails to teach or suggest each and every feature as recited in claim 48. It is respectfully submitted that claim 48 is allowable at least for the reasons set forth above. Further, independent claims 73 and 79 recite patentable subject matter at least for reasons similar to those set forth above with respect to claim 1.

The dependent claims recite patentable subject matter based on their dependencies on the respective independent claims, as well as for the additional features such dependent claims recite.

Withdrawal of the 35 U.S.C. §102 rejection is respectfully requested.

B. Conclusion

For at least the reasons outlined above, Applicant respectfully asserts that the application is in condition for allowance. Favorable reconsideration and allowance of the claims are respectfully solicited.

It is believed that no fee is due in connection with this filing. However, if it is determined otherwise, the Commissioner is hereby authorized to charge our Deposit Account No. 50-0206.

Respectfully submitted,

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